

SENATE BILL REPORT

SB 6341

As Reported By Senate Committee On:
Consumer Protection & Housing, January 25, 2008

Title: An act relating to electronic data recorders in motor vehicles.

Brief Description: Concerning electronic data recorders in motor vehicles.

Sponsors: Senators Kauffman, Delvin and Marr.

Brief History:

Committee Activity: Consumer Protection & Housing: 1/17/08, 1/25/08 [DPS, w/oRec].

SENATE COMMITTEE ON CONSUMER PROTECTION & HOUSING

Majority Report: That Substitute Senate Bill No. 6341 be substituted therefor, and the substitute bill do pass.

Signed by Senators Weinstein, Chair; Kauffman, Vice Chair; Delvin, Haugen, Jacobsen, Kilmer and Tom.

Minority Report: That it be referred without recommendation.

Signed by Senator Honeyford, Ranking Minority Member.

Staff: Vanessa Firnhaber-Baker (786-7471)

Background: Electronic data recorders (EDR), which are also referred to as event data recorders or vehicle black boxes. They are installed in some consumer vehicles by auto manufacturers. Depending on the device, they record between five and 90 seconds of information about the vehicle before and after a collision occurs. The data that the EDR records may include: vehicle speed, steering performance, brake performance, the driver's seatbelt status, direction of the vehicle, and vehicle location. An EDR also typically transmits information about the collision to a central communications system so that emergency help can be sent. The collision information may also be sent to the vehicle's manufacturer for safety analysis purposes. EDRs may also be installed in vehicles pursuant to a subscription service. The most well-known of these services is OnStar. These subscription services provide the driver with directions, diagnostics, and emergency assistance. Subscription service EDRs record and transmit data back to the service provider. Washington law does not currently regulate EDRs. On the federal level, the National Highway Traffic Safety Association (NHTSA) has issued regulations relating to EDRs. Auto manufacturers must comply with these regulations beginning in 2010. Under the regulations, auto manufacturers must disclose the presence of a EDR in the vehicle's owners manual with an explanation of the functions and capabilities of the EDR. NHTSA regulations also specify uniform requirements

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for the kind of data that an EDR must collect, including vehicle speed, brake performance, and seat belt status of driver and front passenger.

Summary of Bill: The bill as referred to committee not considered.

SUMMARY OF BILL (RECOMMENDED SUBSTITUTE): An EDR is defined as a device installed by an auto manufacturer that records vehicle information on: speed, direction, location, steering performance, brake performance, driver's seatbelt status, or has the ability to transmit information concerning a collision to an external system.

If an auto manufacturer has installed an EDR in a vehicle, it must disclose the EDR's presence and functions in the vehicle's owners manual. Subscription services that include the use of an EDR must provide the same disclosures in the service agreement. EDR data may not be accessed by anyone other than the owner of the vehicle except in the following five situations: (1) upon a court order for the data; (2) when the owner consents; (3) for research to improve vehicle safety as long as the owner and the vehicle remain anonymous; (4) to respond to a medical emergency; and (5) when the data is being used to fulfill a subscription services' agreement. Unlawful access of EDR data is a misdemeanor.

For purposes of obtaining EDR data to investigate a collision, the owner of the EDR data is the owner of the vehicle at the time of the collision.

Insurers may not non-renew or take any other negative underwriting action against an insured solely because the insured will not provide access to EDR data.

Violations of the act are per se violations of the consumer protection act.

Technical changes unrelated to this bill are made to RCW 46.63.020 upon request by the Code Reviser's Office.

EFFECT OF CHANGES MADE BY CONSUMER PROTECTION & HOUSING COMMITTEE (Recommended Substitute - As Passed Committee): The definition of "EDR" is amended to include all devices that record the enumerated vehicle information, not just those that record for the purpose of obtaining collision data.

The definition of "owner" is amended to clarify that the owner of EDR data when it is being accessed to investigate a collision is the person who owned the vehicle at the time of the collision.

The section that prohibited insurance companies from making access to an insured's EDR data a condition of paying or defending a claim is deleted. The provision prohibiting insurers from requesting permission to access an insured's EDR until a claim arose is deleted.

Technical changes in vocabulary were made for consistency and to align the vocabulary with existing regulations promulgated by the Insurance Commissioner.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Substitute - Heard in Committee:

PRO: EDR technology is valuable, but we need controls on how the information is used and shared. The most important control is that the owner of the vehicle owns the data. Giving the owner notice that the vehicle has an EDR is important because a lot of people don't realize their vehicle is equipped with this. Auto repair shops should be required to get the consent of the vehicle owner before the shop can access the EDR data; if the shop cannot explain to the consumer what an EDR is, then the shop should not have access to the data

CON: The bill may make it impossible for insurance companies to access objective information about an accident; accident reconstruction experts already use EDR data on occasion. Insureds will deny their insurer access to the EDR if the insured thinks that the data will not support the insureds' version of how the accident occurred. Insureds have a duty to cooperate in the investigation of claims; this bill would allow them to refuse to cooperate.

OTHER: EDRs are not the same as airplane black boxes; EDRs do not record voices. We support legislation that requires disclosure that a vehicle is equipped with an EDR and agree that the owner of the vehicle should be the owner of the EDR data, but would like the definition of EDR to be identical to the definition used in the federal regulation. A disclosure that a vehicle is equipped with an EDR could be problematic if it is written in a way that makes consumers scared to have an EDR in their vehicle. It is cumbersome to have different disclosure requirements in different states. The effective date is too soon; it will be difficult for manufacturers to be in compliance within 90 days. The bill should make it clear that the data is owned by the person who owned the car at the time of the accident, rather than when the data is ultimately accessed. The court order exception should be broader to allow access by governmental entities without the owner's consent. The research exception should be broadened so that manufacturers are able to access data for engineering purposes. EDRs improve vehicle safety and we want to ensure that nothing inadvertently limits this. Repair shops should be able to access EDR data for repair purposes without an owner's consent; getting consent might be difficult if the owner doesn't understand what information is contained in the EDR.

Persons Testifying: PRO: Jennifer Shaw, American Civil Liberties Union.

CON: Mel Sorenson, Property-Casualty Insurers.

OTHER: Nancee Wildermuth, Alliance of Automobile Manufacturers; Jean Leonard, State Farm of Washington Insurance; Cliff Webster, General Motors, American Insurance Association.